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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAIME ALVAREZ; et al.,

Plaintiffs - Appellants,

v.

CITY OF SAN BERNARDINO, a
Municipal Corporation; et al.,

Defendants - Appellees,

and

JULIO ESTRADA,

Defendant.

No. 03-56086

D.C. No. CV-00-03048-PA

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted November 18, 2005^{**}
Pasadena, California

Before: B. FLETCHER, SILVERMAN, and PAEZ, Circuit Judges.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Plaintiffs-Appellants appeal the district court's grant of summary judgment to Defendants-Appellees on the merits and the award of costs. At issue is whether Plaintiffs' civil claims against the City of San Bernadino and the County of San Bernadino's District Attorney, arising out of a lengthy criminal investigation and filed before criminal charges were brought against Appellants, are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). Because there was no criminal conviction at the time that the district court was considering Appellees' motion for summary judgment, the court should not have granted summary judgment and costs against Appellants. Rather, the district court should have simply stayed the civil proceedings until the criminal case had been resolved.

We REVERSE the grant of summary judgment and costs against Plaintiffs and REMAND for the district court to stay consideration of the motion for summary judgment pending the resolution of the related criminal proceeding.

REVERSED and REMANDED.